



Outright International Caribbean Program Submission
Report on colonialism and sexual orientation and gender identity
Independent Expert on protection against violence and discrimination based on sexual orientation
and gender identity

This submission responds to the following questions posed by the Independent Expert on the topic of colonialism: 2, 7, 8, 9 and 10.

[#2 What laws, policies, and practices regulated or influenced the shaping of or the socio-normative perception of sexual orientation and gender identity in colonial times? How were they introduced, promoted, administered or enforced? Examples could include prohibition of certain sexual acts, but also regulation of sexual or gender identities and expressions \(such as bans on cross-dressing\).](#)

Countries of the Commonwealth Caribbean¹ carry the legacy of British imperialism, inheriting British buggery and gross indecency laws and bans on cross-dressing. Below is a non-exhaustive list of examples of these laws regulating sex and gender and how they are enforced by police and the courts:

Buggery and gross indecency:

While under British colonial rule during the period of slavery and indentureship, buggery (criminalizing anal sex) and gross indecency (criminalizing sexual acts between persons of the same sex) laws were introduced in Caribbean colonies. In *Caleb Orozco v The Attorney General* the Supreme Court of Belize² detailed the history of sodomy laws in English common law: they were imposed in British colonies culminating in the Indian Penal Code, which then influenced Jamaican criminal laws, which thereafter was used as a model for Caribbean colonies.

In the latter half of the 20th century, many Caribbean colonies successfully sought independence from Britain. The constitutions of these newly independent states included “savings law” clauses which limit judicial review of laws and punishments that were in existence prior to the

¹ The jurisdictions included in the term Commonwealth Caribbean are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago as well as British overseas territories: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos.

² Claim No. 669 of 2010, *Caleb Orozco v The Attorney General* et al, p.7-12

coming into force of the constitutions.³ This helped to ensure the continued applicability of buggery laws long after England decriminalized same-sex relations in 1967.

Notably, the buggery laws make no distinction between consensual and non-consensual same-sex relations. In practice, cases involving buggery and gross indecency that are prosecuted involve non-consensual reports of sexual assault or assault of a minor.⁴ This conflation of violent assault with same-sex consensual acts established a “continuum of criminality”.⁵

Country	Law	Legality of same-sex relations
Antigua and Barbuda	s. 12 and 15 Sexual Offences Act 1995	Legal, struck down by court in 2022
Bahamas	s. 16 Sexual Offences Act 1989	Legal, struck down by court in 1990
Barbados	s. 9 and 14 Sexual Offences Act 1992	Legal, struck down by court in 2022
Belize	s. 53, Belize Criminal Code	Legal, Struck down by court in 2016
Dominica	s. 14 and 16, Sexual Offences Act	Currently being challenged in court
Grenada	s. 430 and 431 Criminal Code 1987	Currently being challenged in court
Guyana	s. 352 – 355 Criminal Law Offences Act, Chap. 8:01	Illegal, laws still in force
Jamaica	s.76, 77, 79 Offences Against the Person Act Cap.269	Illegal, laws still in force
St. Kitts and Nevis	s. 56 and 57 Offences Against the Person Act 1986	Legal, struck down by court in 2022
St. Lucia	s. 132 and 133 Criminal Code	Currently being challenged in

³ Tracy Robinson, Arif Bulkan, Adrian Saunders, *Fundamentals of Caribbean Constitutional Law* (Sweet & Maxwell, 2015) p. 269

⁴ Gaskins, J. (n.d.). ‘Buggery’ and the Commonwealth Caribbean: a comparative examination of the Bahamas, Jamaica, and Trinidad and Tobago. [online] Available at: <https://sas-space.sas.ac.uk/4817/1/16Gaskins.pdf> p.435

⁵Alexander, M.J. (1994). Not Just (Any) Body Can Be a Citizen: The Politics of Law, Sexuality and Postcoloniality in Trinidad and Tobago and the Bahamas. *Feminist Review*, (48), p.10. doi:<https://doi.org/10.2307/1395166>.

	2004	court
St. Vincent & the Grenadines	s. 146 and 148 Criminal Code 1988	Currently being challenged in court
Trinidad and Tobago	s. 13 and 16 Sexual Offences Act, Chap. 11:28	Struck down by court in 2018 but still on appeal, awaiting decision of appeal court

Cross-dressing and vagrancy

Part V of the Guyana Summary Jurisdiction (Offences) Act 1893 covers “Offences Against Religion, Morality and Public Convenience”. Offences under this Act include “Police Offences” such as section 153(1)(xlvii) which criminalizes cross-dressing for any “improper purpose.” This Act resulted from the then Attorney General’s effort to consolidate all the relevant laws in place in then-British Guiana, the second such consolidation after the end of slavery.⁶ The Act provides no definition of “improper purpose,” which encouraged arbitrary and discriminatory enforcement, disproportionately affecting LGBT persons. In a 2012 study,⁷ all trans and gender non-conforming persons interviewed had, at some time in the past, been charged with a summary offence. Similarly, they were all charged with the cross-dressing offence, except one interviewee. The study also details how criminal laws created an environment of repression and fear of public expression for LGBT people in Guyana.

In 2018, this law was successfully challenged and deemed unconstitutional in *McEwan et al v Attorney General of Guyana*.⁸ In 2021 Guyana’s Parliament voted to remove the colonial-era law, deeming it outdated and discriminatory.

Immigration Laws

Belize and Trinidad and Tobago retain discriminatory immigration laws. S. 5 of the Immigration Act of Belize includes homosexuals in the category of prohibited immigrants. Similarly, s. 8 of the Trinidad and Tobago Immigration Act prohibits homosexuals from entering the country. Both of these laws were challenged at the Caribbean Court of Justice.⁹ The challenge was unsuccessful, in part, on the arguably irrelevant ground that they were not enforced.

⁶ Bulkan, A. and Robinson, T. (n.d.). *Enduring Sexed and Gendered Criminal Laws in the Anglophone Caribbean*. [online] Available at: https://sta.uwi.edu/crgs/december2017/documents/CRGS_11_Pgs_219-240_ABulkan_TRobinson_EnduringSexedGendered.pdf [Accessed 24 Jan. 2023].

⁷ Carrico, Christopher. 2012. “Collateral Damage: The Social Impact of Laws Affecting LGBT Persons in Guyana.” The Faculty of Law, The University of the West Indies, Cave Hill, Barbados. 16. (Study commissioned by U-RAP).

⁸ CCJ Appeal No. GYCV2017/015

⁹ CCJ Application No. OA1 and 2 of 2013 Maurice Tomlinson v The State of Belize and The State of Trinidad and Tobago, <http://www.caribbeancourtjustice.org/wp-content/uploads/2021/02/2016-CCJ-1-OJ.pdf>

[#7 What is the ongoing impact of gender- and sex-regulating colonial laws on the enjoyment of human rights by LGBT persons? How did the imposition of colonial laws on sex and gender shape social and moral ideas about sexual orientation and gender diversity?](#)

For those engaged in consensual same-sex relationships, buggery laws serve as validation of continued social stigma and exclusion from protection from discrimination. For example, in Trinidad and Tobago, The Equal Opportunity Act of 2000 explicitly excludes sexual orientation as a ground of protection. Likewise, with the exception of Guyana and Saint Lucia, laws governing domestic violence are crafted in a way that generally excludes persons in same-sex relationships from protection.

In 2016, Grenada held a constitutional referendum. The proposed Rights and Freedoms Bill was rejected, with religious bodies claiming that the language of gender equality would lead to the decriminalization of same-sex relations and the promotion of gay marriage.¹⁰ Similarly in Belize, the tabling of a proposed Equal Opportunity Bill was derailed in 2020, after religious leaders protested four protected categories relating to LGBTIQ people – lawful sexual activity, intersex status, gender identity and sexual orientation.¹¹

[#8 Was there a relationship between colonial laws and policies that created unequal treatment and power relations affecting LGBT persons, paving the way to intersecting forms of discrimination, exclusion, racism, xenophobia and related intolerance, patriarchy, and other forms of discrimination and oppression? How did these laws and policies impact persons with multiple and intersecting identities such as LGBT persons with disabilities, older LGBT persons, LGBT children, LGBT persons of African descent, among others.](#)

Colonial laws criminalizing non-heterosexual intimacy (via buggery and gross indecency laws) legitimized the unequal treatment and stigmatization of LGBTIQ persons in the Caribbean. Professor Tracy Robinson explains that laws modelled on UK legislation criminalizing the “abominable crime of buggery” were critical in governing a race-based political system and provided legitimacy for the colonial state.¹² The black man was seen as a “subject prone to sex crimes such as buggery and rape” and was deemed “a necessary site of physical punishment.”¹³ Post-emancipation vagrancy laws (including those dealing with cross-dressing) were enacted “to cope with the paradigm shift in the mode of production from slavery to free labour” and “designed to regulate and exercise control of both the ex-slave population the newly imported

¹⁰ <https://today.caricom.org/2016/11/25/no-vote-dominates-in-grenadas-constitutional-reform-referendum/>

¹¹ <https://amandala.com.bz/news/gob-pulls-the-equal-opportunities-bill-eob/> [Accessed 26 May 2023].

¹² Tracy Robinson, “A trace of law: State building and the criminalization of buggery” in Chelsea Schields and Dagmar Herzog (eds), *The Routledge Companion to Sexuality and Colonialism*, 2021.

¹³ fn 1 - Robinson (2021)

indentured labourers.”¹⁴ The objective as observed by the Caribbean Court of Justice in *McEwan v Attorney General of Guyana*¹⁵ was to curtail mobility in order to keep close to the plantations those whose labour was essential for continued exploitation.¹⁶ In most Caribbean countries, these laws criminalizing non-heterosexual intimacy and vagrancy remain “sacrosanct” and continue to fuel discrimination against LGBTIQ persons. Consequently, the forms of discrimination experienced by groups in a position of vulnerability have only been exacerbated by the imposition of these laws.

[#9 Have any laws, policies, or psycho-social support or legal remedies been put in place to recognize and provide reparations and redress for the legacy of colonialism in relation to the enjoyment of human rights? Do these take into account violence and discrimination based on sexual orientation and gender identity?](#)

The African slave trade and the exploitation of enslaved people in the Caribbean were central to European economic development and the consequent underdevelopment of the Caribbean.¹⁷ For over three hundred years, European nations, notably Britain, Portugal, Spain, France, Netherlands, Denmark, Norway, Sweden and Germany, traded enslaved Africans to the Caribbean.¹⁸ The “unique chattel enslavement experience of African peoples in the Caribbean and elsewhere was understood to be the most financially attractive business enterprise in the modern world.”¹⁹ The legacy of colonialism continues to have a profound negative impact on the peoples of the Caribbean. Notwithstanding this, no laws, policies, legal remedies, or forms of psychosocial support have been put in place in the Caribbean to recognize and provide

¹⁴ *Quincy McEwan et al v Attorney General of Guyana* [2018] CCJ 30 (AJ) para 30; Diana Paton, *The Cultural Politics of Obeah: Religion, Colonialism and Modernity in the Caribbean World* (Cambridge: Cambridge University Press 2015) 123;

¹⁵ *Quincy McEwan et al v Attorney General of Guyana* [2018] CCJ 30 (AJ)

¹⁶ *Quincy McEwan et al v Attorney General of Guyana* [2018] CCJ 30 (AJ) para 30; On vagrancy laws please see Diana Paton, *No Bond But the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870* (Duke University Press, Durham 2004) 54; Diana Paton, “*Small Charges: Law and the Regulation of Conduct in the Post-Slavery Caribbean*”, The Elsa Goveia Memorial Lecture (Published by the Department of History and Archaeology, The UWI Mona, April 2014); Risa Goluboff, *Vagrant Nation: Nation: Police Power, Constitutional Change, and the Making of the 1960s* (Oxford University Press, 2016).

¹⁷ See generally Walter Rodney, *How Europe Underdeveloped Africa*, Bogle-L’Ouverture Publications, London and Tanzanian Publishing House, Dar-Es-Salaam, 1973; Hilary Beckles, *How Britain Underdeveloped the Caribbean: A Reparation Response to Europe’s Legacy of Plunder and Poverty*, The University of the West Indies Press, 2021

¹⁸ Hilary Beckles, “The Reparation Movement: Greatest Political Tide of the Twenty-first Century”, *Social and Economic Studies*, Vol. 68, No. ¾, Special Issue of Reparations (2019) pp. 11 – 30, p. 19-20

¹⁹ Hilary Beckles, “The Reparation Movement: Greatest Political Tide of the Twenty-first Century”, *Social and Economic Studies*, Vol. 68, No. ¾, Special Issue of Reparations (2019) pp. 11 – 30, p. 15

reparations and redress for the legacy of colonialism in relation to the enjoyment of human rights or in relation to any other context.

[#10 How, if at all, should reparatory justice for the lasting consequences of colonialism include measures to address discrimination and violence based on gender, gender identity and sexual orientation?](#)

The Caribbean region has been at the fore in the call for reparatory justice for over two centuries.²⁰ In 2013, Caribbean Heads of Governments established the CARICOM Reparations Commission with a mandate to *“Establish the moral, ethical and legal case for the payment of Reparations by the Governments of all the former colonial powers and the relevant institutions of those countries, to the nations and people of the Caribbean Community for the Crimes against Humanity of Native Genocide, the Trans-Atlantic Slave Trade and a racialized system of chattel Slavery.”*²¹ The Commission has acknowledged that it is operating “within the context of persistent objection from European governments to its mandate.”²² The CARICOM Commission developed a Ten Point Plan for Reparatory Justice which calls for (1) full formal apology from the governments of Europe; (2) repatriation program; (3) indigenous peoples development program; (4) development of cultural institutions; (5) Europe’s participation in the alleviation of the public health crisis; (6) Europe’s participation in illiteracy eradication; (7) development of an African Knowledge Program; (8) psychological rehabilitation efforts; (9) technology transfer and science sharing; and (10) debt cancellation.²³

The pervasiveness of discrimination and violence based on gender, gender identity and sexual orientation and the constraints in securing access to justice cannot be divorced from the legacy of colonialism in the region. CARICOM’s Ten Point Plan for Reparatory Justice was adopted by Caribbean governments in 2014, i.e., one year before the adoption of Sustainable Development Goals (SDGs) by all United Nations Member States in 2015. Consequently, CARICOM’s Ten Point Plan does not account for LGBTI people in the implementation of the SDGs.

²⁰ Hilary Beckles, “The Reparation Movement: Greatest Political Tide of the Twenty-first Century”, *Social and Economic Studies*, Vol. 68, No. ¾, Special Issue of Reparations (2019) pp. 11 – 30, p. 18 - 19; Recent developments have seen the establishment of the CARICOM Prime Ministerial Sub-Committee on Reparation, the CARICOM Reparation Commission, National Committees on Reparation and the Center for Reparation Research at the University of the West Indies.

²¹ CARICOM Reparations Commission, “About Us” available at <https://caricomreparations.org/about-us/> accessed May 24, 2023

²² CARICOM Reparations Commission, “10 – Point Reparation Plan” available at <https://caricomreparations.org/caricom/caricoms-10-point-reparation-plan/> accessed May 24, 2023;

²³ CARICOM, CARICOM Ten Point Plan for Reparatory Justice available at <https://caricom.org/caricom-ten-point-plan-for-reparatory-justice/> accessed May 24, 2023. .

We propose that as Caribbean governments work aggressively towards achievement of the SDGs, and continue to work to uphold the human rights of all people, including LGBTI people, the European nations (as former colonizers of Caribbean):

- 1) Support the achievement of the SDGs, particularly those concerned with poverty, health and well-being, education, gender equality, reduction of inequality, and the securing of access to justice;²⁴ and
- 2) fund the establishment and operation of national human rights institutions that broadly protect human rights including protection from discrimination and that which operates in accordance with the Principles relating to the State of National Institutions (The Paris Principles).²⁵ As at the date of this submission, there are no national human rights institutions in the Caribbean that have been duly accredited as being in full compliance with The Paris Principles.²⁶

²⁴ These six SDGs are Goal 1: End Poverty in all its forms everywhere; Goal 3: Ensure Healthy Lives and Promote Well-being for all ages; Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; Goal 5: Achieve gender equality and empower all women and girls; Goal 10: Reduce inequality within and among countries; Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

²⁵ The Principles relating to the Status of National Institutions (“Paris Principles”) adopted by General Assembly resolution 48/134 of 20 December 1993.

²⁶ Office of the High Commissioner on Human Rights, UN Human Rights and NHRIs available at <https://www.ohchr.org/en/countries/nhri> accessed May 25, 2023; OHCHR and GANHRI “Status Accreditation Chart as of April 2023” available at <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf> accessed May 25, 2023